

State of California
BOARD OF EQUALIZATION

SALES AND USE TAX REGULATIONS

Regulation 1588. SEEDS, PLANTS AND FERTILIZER

Reference: Sections 6358 Revenue and Taxation Code

(a) SEEDS AND PLANTS. Tax does not apply to sales of seeds, annual plants, and operative January 1, 1999, non-annual plants, the products of which ordinarily constitute food for human consumption or the products of which are to be sold in the regular course of the purchaser's business including fruit trees, berry vines, and grape rootlings or rootstock, or cuttings of every variety. Tax does not apply to sales of seed, the products of which will be used as feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption or the products of which are to be sold in the regular course of the purchaser's business.

(b) FERTILIZER.

(1) **DEFINITION.** The term "fertilizer" includes commercial fertilizers, agricultural minerals, and manure. The terms "commercial fertilizers" and "agricultural minerals" as used herein are defined in Sections 14522 (commercial fertilizer) and 14512 (agricultural minerals) of the Food and Agricultural Code. "Manure" means the excreta of any domestic animal or domestic fowl which is not artificially mixed with any material except a material which has been used for bedding, sanitary, or feeding purposes for such an animal or fowl or for the preservation of the manure. The term "fertilizer" does not include "soil amendments" or "auxiliary soil and plant substances" as these terms are defined (with the exception noted below) in Sections 14552 (soil amendments) and 14513 (auxiliary soil and plant substances) of the Food and Agricultural Code. For purposes of this regulation, "manures sold without guarantees for plant nutrients" as described in Section 14552 of the Food and Agricultural Code, are not soil amendments.

(2) **APPLICATION OF TAX.** Tax does not apply to sales of fertilizer to be applied to land (including foliar application) the products of which are to be: (a) used as food for human consumption, (b) used as feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption, or (c) sold in the regular course of the purchaser's business.

When insecticides are mixed with fertilizer and the mixture sold, that portion of the total price allocable to the fertilizer may be excluded from the measure of the tax if the mixed product is applied to land (including foliar application) the products of which are to be: (a) used as food for human consumption, (b) used as feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption, or (c) sold in the regular course of the purchaser's business.

History: Adopted as of January 1, 1945, as a restatement of previous rulings.

Amended and renumbered March 24, 1970, effective April 29, 1970.

Amended August 20, 1985, effective November 22, 1985. In Subdivision (b)(1), defined the term "fertilizer" to include the terms "commercial fertilizers," "agricultural minerals," and "manures" as those terms are defined in the Food and Agricultural Code and provided this term does not include soil amendments nor does it include auxiliary soil and plant substances. Corrected references to sections of the Food and Agricultural Code and defined the term "manure". Deleted the footnote which repeated the text of the applicable Food and Agricultural Code sections.

Amended August 24, 1988, effective November 18, 1988. In subdivision (a) amended to provide that effective October 1, 1987, nonannual plants, such as fruit trees and berry vines, which are eligible to be purchased with federal food stamp coupons and are so purchased are exempt from the sales and use taxes.

Amended July 30, 1992, effective January 10, 1993. Paragraph (a) was amended to make clear that tax does not apply to sales of seed which will be used to grow feed for any animals which ordinarily constitute food for human consumption and not just for livestock and poultry. Paragraph (b)(1) was amended to correct references to sections of the Food and Agricultural Code. Paragraph (b)(2) was amended to clarify that to be exempt, the products grown must be used as *food* for human consumption or sold in the regular course of business and that the exemption applies to fertilizer which has been mixed with insecticides when sold for the same purposes as unmixed fertilizer.

Amended January 22, 1999, effective April 1, 1999. In subdivision (a), new second sentence added; un-numbered paragraph deleted. Phrase "are to be" replaced with "(c)" in subdivision (b)(2).

Regulation 1588 (Continued)

Amended October 7, 1999, effective December 3, 1999. Deleted reference to section 6373 of the Revenue and Taxation Code concerning food stamps as obsolete. Prior to January 1, 1999 sales of non-annual plants were taxable unless purchased with food stamp coupons. After operative date of amendment to section 6358 (Statutes of 1998, Chapter 323, (AB-2798)) sales of non-annual plants the products of which are food for human consumption became not taxable regardless of method of payment. Subdivision (a) corrected operative date to January 1, 1999 to comply with statutory change to section 6358 by AB-2798. Also added the words "or rootstock" after the word "rootlings" to recognize that they are synonymous terms used by the grape and tree fruit industry.

Amended October 19, 2004, effective January 13, 2005. Subdivision (a)-first sentence- comma added after "seeds" and word "and" before "annual plants" deleted and phrase ", and operative January 1, 1999, non annual plants," added after word "plants" and phrase "the products of which" added after word "or" and period deleted; second sentence- phrase "Operative . . . consumption," deleted to combine remainder of second sentence with first; third sentence- phrase "the products of which" added after word "or."

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.